

AMENDMENT TO H.R. 3113
OFFERED BY MRS. WILSON OR MR. GREEN

Strike out all after the enacting clause and insert
the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Unsolicited Commer-
3 cial Electronic Mail Act of 2000”.

4 SEC. 2. DEFINITIONS.

5 In this Act:

6 (1) CHILDREN.—The term “children” includes
7 natural children, stepchildren, adopted children, and
8 children who are wards of or in custody of the par-
9 ent, who have not attained the age of 18 and who
10 reside with the parent or are under his or her care,
11 custody, or supervision.

12 (2) COMMISSION.—The term “Commission”
13 means the Federal Trade Commission.

14 (3) DOMAIN NAME.—The term ‘domain name’
15 means any alphanumeric designation which is reg-
16 istered with or assigned by any domain name reg-
17 istrar, domain name registry, or other domain name
18 registration authority as part of an electronic ad-
19 dress on the Internet.

20 (4) ELECTRONIC MAIL ADDRESS.—

1 (A) IN GENERAL.—The term “electronic
2 mail address” means a destination (commonly
3 expressed as a string of characters) to which
4 electronic mail can be sent or delivered.

5 (B) INCLUSION.—In the case of the Inter-
6 net, the term “electronic mail address” may in-
7 clude an electronic mail address consisting of a
8 user name or mailbox (commonly referred to as
9 the “local part”) and a reference to an Internet
10 domain (commonly referred to as the “domain
11 part”).

12 (5) INTERNET.—The term “Internet” has the
13 meaning given that term in section 231(e)(1) of the
14 Communications Act of 1934 (47 U.S.C. 231(e)(1)).

15 (6) INTERNET ACCESS SERVICE.—The term
16 “Internet access service” has the meaning given that
17 term in section 231(e)(4) of the Communications
18 Act of 1934 (47 U.S.C. 231(e)(4)).

19 (7) INITIATOR.—The term “initiator” when
20 used with respect to an electronic mail message
21 means the person who initiated the transmission of
22 such message, or the agents or assigns of such per-
23 son.

1 (8) RECIPIENT.—The term “recipient” when
2 used with respect to an electronic mail message
3 means the addressee of such message.

4 (9) UNSOLICITED COMMERCIAL ELECTRONIC
5 MAIL MESSAGE.—The term “unsolicited commercial
6 electronic mail message” means any electronic mail
7 message that—

8 (A)(i) advertises a product or service for
9 profit; or

10 (ii) is sent for other commercial purposes;
11 and

12 (B) is sent to a recipient with whom the
13 initiator does not have an existing business re-
14 lationship.

15 Such term includes an electronic mail message that
16 invites the recipient to view content on an Internet
17 web site that is operated for a commercial purpose.

18 **SEC. 3. FINDINGS; POLICY.**

19 (a) FINDINGS.—The Congress finds the following:

20 (1) There is a right of free speech on the Inter-
21 net.

22 (2) The Internet has increasingly become a crit-
23 ical mode of global communication and now presents
24 unprecedented opportunities for the development and
25 growth of global commerce and an integrated world-

1 wide economy. In order for global commerce on the
2 Internet to reach its full potential, individuals and
3 entities using the Internet and other online services
4 should be prevented from engaging in activities that
5 prevent other users and Internet service providers
6 from having a reasonably predictable, efficient, and
7 economical online experience.

8 (3) Unsolicited commercial electronic mail can
9 be an important mechanism through which busi-
10 nesses advertise and attract customers in the online
11 environment.

12 (4) The receipt of unsolicited commercial elec-
13 tronic mail may result in costs to recipients who
14 cannot refuse to accept such mail and who incur
15 costs for the storage of such mail, or for the time
16 spent accessing, reviewing, and discarding such mail,
17 or for both.

18 (5) Unsolicited commercial electronic mail may
19 impose significant monetary costs on Internet access
20 services, businesses, and educational and nonprofit
21 institutions that carry and receive such mail, as
22 there is a finite volume of mail that such providers,
23 businesses, and institutions can handle without fur-
24 ther investment. The sending of such mail is increas-
25 ingly and negatively affecting the quality of service

1 provided to customers of Internet access service, and
2 shifting costs from the sender of the advertisement
3 to the Internet access service.

4 (6) While some senders of unsolicited commer-
5 cial electronic mail messages provide simple and reli-
6 able ways for recipients to reject (or “opt-out” of)
7 receipt of unsolicited commercial electronic mail
8 from such senders in the future, other senders pro-
9 vide no such “opt-out” mechanism, or refuse to
10 honor the requests of recipients not to receive elec-
11 tronic mail from such senders in the future, or both.

12 (7) An increasing number of senders of unsolic-
13 ited commercial electronic mail purposefully disguise
14 the source of such mail so as to prevent recipients
15 from responding to such mail quickly and easily.

16 (8) Many senders of unsolicited commercial
17 electronic mail collect or harvest electronic mail ad-
18 dresses of potential recipients without the knowledge
19 of those recipients and in violation of the rules or
20 terms of service of the database from which such ad-
21 dresses are collected.

22 (9) Because recipients of unsolicited commercial
23 electronic mail are unable to avoid the receipt of
24 such mail through reasonable means, such mail may
25 invade the privacy of recipients.

1 (10) In legislating against certain abuses on the
2 Internet, Congress should be very careful to avoid
3 infringing in any way upon constitutionally protected
4 rights, including the rights of assembly, free speech,
5 and privacy.

6 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
7 POLICY.—On the basis of the findings in subsection (a),
8 the Congress determines that—

9 (1) there is substantial government interest in
10 regulation of unsolicited commercial electronic mail;

11 (2) Internet access services should not be com-
12 pelled to bear the costs of unsolicited commercial
13 electronic mail without compensation from the send-
14 er; and

15 (3) recipients of unsolicited commercial elec-
16 tronic mail have a right to decline to receive or have
17 their children receive unsolicited commercial elec-
18 tronic mail.

19 **SEC. 4. PROTECTIONS AGAINST UNSOLICITED ELECTRONIC**
20 **MAIL.**

21 (a) PROTECTIONS AGAINST UNSOLICITED ELEC-
22 TRONIC MAIL.—

23 (1) RETURN ADDRESSES REQUIRED.—It shall
24 be unlawful for any person to initiate the trans-
25 mission of an unsolicited commercial electronic mail

1 message to any person within the United States un-
2 less such message contains a valid electronic mail
3 address, conspicuously displayed, to which a recipi-
4 ent may send a reply to the initiator to indicate a
5 desire not to receive any further messages.

6 (2) TRANSMISSIONS AFTER OBJECTION.—It
7 shall be unlawful for any person to initiate the
8 transmission of an unsolicited commercial electronic
9 mail message to any person within the United States
10 following a request by a recipient to the initiator to
11 be removed from all distribution lists. Such a re-
12 quest shall be deemed to terminate an existing busi-
13 ness relationship for purposes of determining wheth-
14 er subsequent messages are unsolicited commercial
15 electronic mail message.

16 (3) ROUTING INFORMATION.—It shall be unlaw-
17 ful for any person who initiates the transmission of
18 any unsolicited commercial electronic mail message
19 to any person within the United States to take any
20 action that causes any Internet routing information
21 contained in or accompanying such message—

22 (A) to be inaccurate;

23 (B) to be invalid according to the pre-
24 vailing standards for Internet protocols; or

1 (C) to fail to accurately reflect the routing
2 of such message.

3 (4) IDENTIFIER REQUIRED.—It shall be unlaw-
4 ful for any person to initiate the transmission of any
5 unsolicited commercial electronic mail message to
6 any person within the United States unless each
7 message is identified as unsolicited commercial elec-
8 tronic mail in a standardized manner to be pre-
9 scribed by the Commission. The Commission shall
10 prescribe such identifier by rule within 90 days after
11 the date of enactment of this Act. Such standardized
12 identifier shall permit automatic blocking or filtering
13 of identified messages by a recipient.

14 (b) INTERNET ACCESS SERVICE POLICIES REGARD-
15 ING UNSOLICITED COMMERCIAL ELECTRONIC MAIL RE-
16 SPECTED.—

17 (1) INTERNET ACCESS SERVICE POLICIES PER-
18 MITTED.—A provider of Internet access service is
19 permitted to establish and enforce policies regarding
20 unsolicited commercial electronic mail, if such poli-
21 cies comply with the requirements of paragraph (3).

22 (2) TRANSMISSIONS IN VIOLATION OF POSTED
23 POLICY PROHIBITED.—It shall be unlawful for any
24 person to initiate the transmission of an unsolicited
25 commercial electronic mail message to any person

1 within the United States in violation of such a pub-
2 licly posted policy governing the use of the equip-
3 ment of a provider of Internet access service for
4 transmission of commercial electronic mail.

5 (3) ENFORCEABLE POLICIES.—A policy regard-
6 ing unsolicited commercial electronic mail may be
7 enforced under paragraph (2) if such policy complies
8 with the following requirements:

9 (A) CLEAR POLICY REQUIRED.—The post-
10 ed policy explicitly provides that compliance
11 with such rule or set of rules is a condition of
12 use of such equipment to deliver commercial
13 electronic mail.

14 (B) POLICY MUST BE PUBLICLY AVAIL-
15 ABLE.—Such policy is publicly available by one
16 or more of the following methods:

17 (i) Such policy is clearly and conspicu-
18 ously posted on a World Wide Web site of
19 an Internet access service whose Internet
20 domain name is identical to the Internet
21 domain name of the electronic mail address
22 to which the rule or set of rules applies.

23 (ii) Such policy prohibits such use and
24 provides a sender of electronic mail notice
25 of such prohibition through the inclusion,

1 in the initial banner message that is auto-
2 matically transmitted upon the establish-
3 ment of a connection to any standard port
4 for accepting electronic mail of any mail
5 host designated to receive mail for the pro-
6 vider (which connection results from an at-
7 tempt to send any electronic mail), of a
8 textual message reading “NO UCE”.

9 (iii) Such policy provides a sender of
10 electronic mail notice of such rule or set of
11 rules through the inclusion, in the initial
12 banner message described in clause (ii), of
13 a textual message identifying a publicly
14 available location or means (which may in-
15 clude a telephone number, World Wide
16 Web site, or electronic mail address) at or
17 by which to access the entire set of poli-
18 cies, and that is in the following form:
19 “UCE POLICY AT ____” (the blank
20 being filled in with information identifying
21 such location or means of access).

22 (iv) Such policy is otherwise made
23 publicly available by the Internet access
24 service in accordance with a technological
25 standard adopted by an appropriate Inter-

1 net standards setting body (such as the
2 Internet Engineering Task Force) and rec-
3 ognized by the Commission by rule as a
4 fair standard.

5 (c) AUTHORITY OF ISP TO COLLECT COMPENSA-
6 TION.—

7 (1) UNCOMPENSATED TRANSMISSION NOT RE-
8 QUIRED.—A provider of Internet access service may
9 decline to transmit unsolicited commercial electronic
10 mail messages to its subscribers without compensa-
11 tion from the sender of the unsolicited commercial
12 electronic mail.

13 (2) ISP INTERNAL OPT-OUT LIST REQUIRED.—
14 A provider of Internet access service that is com-
15 pensated for the transmission of unsolicited commer-
16 cial electronic mail into its system shall provide the
17 option to its customers to not receive any unsolicited
18 commercial electronic mail messages, unless the cus-
19 tomer has agreed to receive unsolicited commercial
20 electronic mail messages in exchange for discounted
21 or free Internet access service.

22 (d) PROTECTION OF INTERNET ACCESS SERVICE
23 PROVIDERS.—

24 (1) IN GENERAL.—A provider of Internet ac-
25 cess service who, in good faith, takes action to re-

1 strict or prevent the receipt of unsolicited commer-
2 cial electronic mail messages by its customers shall
3 not be liable for any harm resulting from failure to
4 prevent such receipt.

5 (2) RULE OF CONSTRUCTION.—Paragraph (1)
6 may not be construed to prevent or restrict the li-
7 ability of a provider of Internet access service for
8 any failure to provide any services other than re-
9 striction or prevention for customers of receipt of
10 unsolicited commercial electronic mail messages.

11 (e) DOMAIN NAME REGISTRAR INFORMATION.—

12 (1) PROHIBITION.—It shall be unlawful for any
13 person within the United States to use or disclose
14 domain name registration data, obtained from a do-
15 main name registrar, domain name registry or other
16 domain name registration authority if—

17 (A) such use or disclosure violates the pub-
18 licly available policies of the domain name reg-
19 istrar, domain name registry, or domain name
20 registration authority; and

21 (B) the domain name registration data is
22 used for the purpose of transmitting or ena-
23 bling the transmission of an unsolicited com-
24 mercial electronic mail message in violation of
25 section 4.

1 (2) PUBLIC AVAILABILITY.—For purposes of
2 this subsection, the policy of a domain name reg-
3 istrar, registry, or other domain name registration
4 authority is publicly available if it is clearly and con-
5 spicuously posted on its World Wide Web site.

6 (3) LIABILITY.—A domain name registrar, do-
7 main name registry, or other domain name authority
8 who refuses to disclose domain name registration
9 data in the good faith belief that such data would
10 be used for the purpose of transmitting or enabling
11 the transmission of an unsolicited commercial elec-
12 tronic mail message in violation of section 4 shall
13 not be liable for any harm resulting from such re-
14 fusal.

15 **SEC. 5. ENFORCEMENT.**

16 (a) GOVERNMENTAL ORDER.—

17 (1) TRANSMISSIONS SUBJECT TO ORDER.—
18 Whoever violates section 4 shall be subject to an
19 order of the Commission to refrain from further
20 mailings of unsolicited commercial electronic mail
21 messages to designated addresses of the recipient or
22 to a designated provider of Internet access service.

23 (2) ISSUANCE OF ORDERS.—Upon receipt of
24 notice in a manner to be determined by the Commis-
25 sion from a recipient or provider of Internet access

1 service that a transmission has been received in vio-
2 lation of any provision of section 4, the Commission
3 shall issue an order, if requested by the recipient or
4 provider, to the initiator thereof directing the
5 initiator and his or her agents or assigns to refrain
6 from further transmissions to the named recipient or
7 provider.

8 (3) COVERAGE OF MINOR CHILDREN BY OR-
9 DERS.—Upon request of any recipient, the order of
10 the Commission shall include the names and elec-
11 tronic mail addresses of any of the children of the
12 recipient.

13 (4) PROHIBITIONS CONTAINED IN ORDERS.—

14 (A) The order of the Commission shall ex-
15 pressly prohibit the initiator or the initiator's
16 agents or assigns from making any further
17 transmissions of unsolicited commercial elec-
18 tronic mail messages to the designated recipi-
19 ents or providers of Internet access service, ef-
20 fective on the 30th calendar day after receipt of
21 the order.

22 (B) The order shall also direct the initiator
23 and his or her agents or assigns to delete imme-
24 diately the names and electronic mail addresses
25 of the designated recipients or providers from

1 all mailing lists owned or controlled by the
2 initiator or his or her agents or assigns and
3 shall prohibit the initiator and his or her agents
4 or assigns from the sale, lease, exchange, li-
5 cense, or other transaction involving mailing
6 lists bearing the names and electronic mail ad-
7 dresses of the designated recipients or pro-
8 viders.

9 (5) ENFORCEMENT OF ORDERS.—

10 (A) Whenever the Commission believes
11 that the initiator or the initiator's agents or as-
12 signs has violated or is violating an order given
13 under or the regulations prescribed under sec-
14 tion 4, it shall serve upon the initiator or the
15 initiator's agent's or assigns, by registered or
16 certified mail, a complaint stating the reasons
17 for its belief and request that any response
18 thereto be filed in writing with the Commission
19 within 15 days after the date of such service.

20 (B) If the Commission, after appropriate
21 hearing if requested by the initiator or the
22 initiator's agent's or assigns, and without a
23 hearing if such a hearing is not requested,
24 thereafter determines that the order given has
25 been or is being violated, it is authorized to re-

1 quest the Attorney General to make application,
2 and the Attorney General is authorized to make
3 application, to a district court of the United
4 States for an order directing compliance with
5 such notice.

6 (6) PRESUMPTION.—Receipt of any trans-
7 mission in violation of an order 30 days or more
8 after the effective date of the order shall create a re-
9 buttable presumption that such transmission was
10 sent after such effective date.

11 (7) REMEDIES.—

12 (A) Any district court of the United States
13 within the jurisdiction of which any trans-
14 mission shall have been sent or received in vio-
15 lation of an order given under section 4 shall
16 have jurisdiction, upon application by the Attor-
17 ney General, to issue an order commanding
18 compliance with such notice.

19 (B) Failure to observe such order may be
20 punishable by the court as contempt thereof.

21 (b) PRIVATE RIGHT OF ACTION.—

22 (1) ACTIONS AUTHORIZED.—A person may, if
23 otherwise permitted by the laws or rules of court of
24 a State, bring in an appropriate court of that State,
25 or may bring in an appropriate Federal court if such

1 laws or rules do not so permit, either or both of the
2 following actions:

3 (A) An action based on a violation of sec-
4 tion 4 to enjoin such violation.

5 (B) An action to recover for actual mone-
6 tary loss from such a violation in an amount
7 equal to the greatest of—

8 (i) the amount of such actual mone-
9 tary loss; or

10 (ii) \$500 for each such violation, not
11 to exceed at to total of \$50,000.

12 (2) ADDITIONAL REMEDIES.—If the court finds
13 that the defendant willfully, knowingly, or repeatedly
14 violated section 4 or the regulations prescribed
15 thereunder, the court may, in its discretion, increase
16 the amount of the award to an amount equal to not
17 more than three times the amount available under
18 paragraph (1).

19 (3) ATTORNEY FEES.—In any such action, the
20 court may, in its discretion, require an undertaking
21 for the payment of the costs of such action, and as-
22 sess reasonable costs, including reasonable attorneys'
23 fees, against any party.

24 (4) PROTECTION OF TRADE SECRETS.—At the
25 request of any party to an action brought pursuant

1 to this subsection, the court may, in its discretion,
2 issue protective orders and conduct legal proceedings
3 in such a way as to protect the secrecy and security
4 of the computer, computer network, computer data,
5 computer program, and computer software involved
6 in order to prevent possible recurrence of the same
7 or a similar act by another person and to protect
8 any trade secrets of any party.

9 **SEC. 6. EFFECT ON OTHER LAWS.**

10 (a) NO EFFECT ON CRIMINAL LAW.—Nothing in this
11 Act shall be construed to impair the enforcement of sec-
12 tion 223 or 231 of the Communications Act of 1934, chap-
13 ter 71 (relating to obscenity) or 110 (relating to sexual
14 exploitation of children) of title 18, United States Code,
15 or any other Federal criminal statute.

16 (b) STATE LAW.—This Act is in addition to and not
17 in lieu of any other provision of State law relating to the
18 transmission of electronic mail messages. Nothing in this
19 Act shall be construed to prevent any State from enacting
20 or enforcing any such State law.

21 **SEC. 7. FEDERAL TRADE COMMISSION STUDY INTO EF-**
22 **FECTS OF UNSOLICITED COMMERCIAL ELEC-**
23 **TRONIC MAIL.**

24 Not later than 18 months after the date of enactment
25 of this Act, the Federal Trade Commission shall submit

1 to Congress a report detailing the effectiveness of, enforce-
2 ment of, and the need, if any, for Congress to modify the
3 provisions of this Act.

4 **SEC. 8 SEPARABILITY.**

5 If any provision of this Act or the application thereof
6 to any person or circumstance is held invalid, the remain-
7 der of this Act and the application of such provision to
8 other persons or circumstances shall not be affected.

9 **SEC. 9. EFFECTIVE DATE.**

10 The provisions of this Act shall take effect 90 days
11 after the date of enactment of this Act.